

REQUEST FOR PROPOSAL – LEGAL SERVICES

SECTION I. SUMMARY AND PURPOSE

The **Gardner** Retirement Board (“Board”) is requesting qualification statements from recognized law firms and individual attorneys interested in providing legal services for matters involving the **Gardner** Retirement System (“System”).

The purpose of this Request for Proposal (“RFP”) is to allow the Board to select firms and / or individual attorneys qualified to provide legal services on an as needed basis in the following areas:

- Representation of the Board in administrative proceedings held in accordance with Chapter 32 of the General Laws of Massachusetts and Commonwealth of Massachusetts Regulations 840 CMR-Public Employee Retirement Administration Commission;
- Litigation matters and other disputes involving matters related to Chapter 32 of the General Laws of Massachusetts and Commonwealth of Massachusetts Regulations 840 CMR-Public Employee Retirement Administration Commission;
- Legal advice on matters pertaining to disability retirements, domestic relations orders, investment management agreements, contracts, and related documents in accordance with Chapter 32 of the General Laws of Massachusetts and Commonwealth of Massachusetts Regulations 840 CMR-Public Employee Retirement Administration Commission.

A firm or an individual attorney responding to this RFP may respond with respect to any or all of the categories and may ultimately be selected in more than one such category.

SECTION II. GENERAL INFORMATION

All terms, conditions, requirements, and procedures included in this RFP must be met for a response to be qualified as responsive. A response that fails to meet any material term, condition, requirement or procedure of this RFP may be deemed unresponsive and disqualified. The Board reserves the right to waive or permit cure of non-material errors or omissions.

All responses must be submitted in accordance with the specific terms of this RFP.

A. SUBMISSION OF RESPONSES

1. INSTRUCTIONS FOR SUBMISSION OF RESPONSES

The original, 6 hard paper copies, and an electronic submission of the bidder's responses and attachments must be delivered in the same sealed package **no later than Thursday, October 11, 2018 at 4:00 p.m. EST.** Responses and attachments received after this deadline date and time will not be evaluated. A facsimile or electronic response will not qualify as a "submission" for deadline purposes in advance of or in lieu of a hard copy submission. Responses and attachments should be delivered to:

**Cheryl A. Bosse, Board Administrator
Gardner Retirement Board
95 Pleasant Street
City Hall, Room, 17
Gardner, MA 01440**

When responding to this RFP, firms should take note of the following provisions.

- a) As outlined above in the section titled "SUMMARY AND PURPOSE", the Board requests that firms provide different information depending on the category or categories for which they wish to be considered.
- b) Responses shall be accompanied by a signed transmittal letter, no longer than two pages, setting forth the pertinent aspects of the response and for which category or categories a firm wishes to be considered.
- c) The Board reserves the right to request additional information from firms responding to this Request. Additionally, upon reviewing the responses, the Board may decide to have certain firms make oral presentations.
- d) The Board reserves the right to reject any and all responses to this request, to waive any minor informality in a response, to request clarification of information from any firm responding and to effect any agreement deemed by the Board to be in the Board's best interest with one or more of the firms responding. All responses and their contents will become the sole property of the Board upon receipt by it, and such documents are subject to Freedom of Information Act.
- e) The Board will not reimburse any firm for any costs associated with the preparation or submittal of any response to this request or for any travel and/or per diem incurred in any presentation of such responses.
- f) The duration of each contract entered into as a result of this RFP will be for not more than seven (7) years.

2. DISQUALIFICATION OF RESPONSES

- a. Late Responses: Responses that are received after the deadline date and time shall be automatically disqualified.
- b. Collusion: Collusion by two or more bidders agreeing to act in a manner intended to avoid or frustrate fair and open competition is prohibited and shall be grounds for rejection or disqualification of a proposal or termination of this contract.
- c. Debarred Bidders: A bidder, who is currently subject to any city, state, or federal debarment order or determination, shall not be considered for evaluation.

3. EVALUATION PROCESS

The RFP Evaluation Process will be conducted in two phases. The Board will review all response submissions as follows:

Phase One Review:

Criteria for the evaluation of proposals will be:

Retirement Counsel: Firms and individual attorneys will be evaluated on their recent experience in retirement matters. Specific criteria include:

- (i) Professional experience of the firm or attorney in advising and representing retirement boards in appeals to the Contributory Retirement Appeal Board;
- (ii) Professional experience of the firm, or attorney in handling pension forfeiture cases in accordance with G.L. c. 32, § 15;
- (iii) Knowledge and experience of the firm as to Massachusetts constitutional, statutory, and regulatory law relating to public pensions under G.L. c. 32 and the rules and regulations – 840 CMR - of the Public Employee Retirement Administration Commission;
- (iv) Professional experience of the firm, or attorney in advising and representing retirement boards in matters concerning the Social Security Act (Title 42 of the United States Code);
- (v) Knowledge and experience of the firm, or attorney as to the State Administrative Procedure Act; and
- (vi) Experience with advising on investment related matters including contracts and state & federal securities laws.

Phase Two Review: Cost will be evaluated in relationship to the Phase One Review.

4. COST RESPONSE

The bidder must state the hourly rate of all attorneys who may perform services related to this assignment.

5. ORAL PRESENTATIONS

After completion of Phase One and Phase Two, the Board shall have the option to invite the bidders to make oral presentations. Oral presentations provide the Board with an opportunity to evaluate a bidder through the presentation of their proposal. The Board may limit the number of oral presentations conducted to a minimum of two bidders unless there is only one single qualifying bidder. The Board also has no discretion to award the legal services contract without interviewing bidders. The Board may not create subcommittee to conduct the oral presentations.

The time allotments and the format shall be the same for all oral presentations. The Board may require the bidder's assigned key personnel to conduct the oral presentation.

A bidder is limited to the presentation of material contained in its proposal, with the limited exception that a bidder may address specific questions posed by the Board or provide clarification of information contained in its proposal. A bidder's failure to agree to an oral presentation may result in disqualification from further consideration.

6. ON SITE VISITS

The Board reserves the right to conduct on-site inspections of any or all bidder locations at any time prior to the awarding of this contract to verify the bidder's ability to perform the services required. The Board shall schedule the time of these site visits and shall provide notice of at least three business days before a visit. Failure to agree to a site visit may result in disqualification of a bidder's proposal.

B. COMPONENTS OF PROCUREMENT

1. DURATION AND RENEWAL OPTIONS

The Board intends to enter into a five (5) year contract with the selected bidder(s) for the services solicited in this RFP with an option for a 2 year renewal.

2. SINGLE OR MULTIPLE CONTRACTS

The Board reserves the right to award contracts to a single vendor or multiple vendors, in the best interest of the System.

3. CONTRACT PERFORMANCE AND BUSINESS SPECIFICATIONS

a. Evaluation and Selection of Contractor

The Board shall have sole authority to evaluate and make the final selection of bidder(s) for contract negotiation(s) pursuant to this RFP. The selection will be made after evaluation of both legal services and cost proposals.

b. Termination or Suspension

Contractor's services may be terminated or suspended by the Board for poor performance, failure to perform, fraud or other cause with two (2) weeks prior written notice. Contractors may be terminated from the contract without cause with thirty (30) days prior written notice. The contractor may not terminate the contract or performance thereunder except upon a minimum of one-hundred-twenty (120) days written notice to the Board. Other terms regarding contract termination are subject to negotiation between the selected bidder(s) and the Board.

SECTION III. MINIMUM CRITERIA REQUIREMENTS

Compliance with all criteria listed below is mandatory in order for a bid to be accepted for further review. Lack of compliance will automatically disqualify the bidder.

Bidder's responses should demonstrate compliance with each of the conditions qualifying an institution to propose as outlined below. The bidder's response to each component should be "yes" or "no" for each mandatory requirement.

A. LEGAL AND OTHER REQUIREMENTS

1. Solvency. Certification that the bidder has not been in bankruptcy and/or receivership within the last three calendar years.
2. Corporate Good Standing. If incorporated, identification of the bidder's state of incorporation and a statement that it is in good standing in that state, and, if the state of incorporation is not Massachusetts, a statement that the bidder has complied with all filing requirements of the Massachusetts Secretary of State.
3. Licenses and Registrations. A statement that the bidder meets all applicable state and federal requirements, and has all the licenses and registrations necessary to perform the contract. At least one attorney of the firm must possess a license to practice law in the Commonwealth of Massachusetts.

4. Pending Litigation. Details of any pertinent judgment, criminal conviction, investigation or litigation pending against the bidder or any of its officers, directors, employees, agents, or subcontractors of which the bidder has knowledge or a statement that there are none. The Board reserves the right to reject a response based on this information.
5. Fidelity Bond or Certificate of Liability Insurance. A copy or proof of any fidelity bond or liability insurance policy extending to any or all employees who perform work under the contract are covered.
6. Compliance with RFP Requirements. A statement that the bidder agrees to meet every specification, requirement, or condition set forth in the RFP.
7. Confidentiality: The bidder must submit a statement acknowledging that all materials and information provided to the Contractor by the Board or acquired by the Contractor on behalf of the Board shall be regarded as confidential information in accordance with Federal and State law, and ethical standards. The contractor must take all necessary steps to safeguard the confidentiality of such materials or information.

B. MANDATORY ATTACHMENTS

1. **Massachusetts State Tax Disclosure.** The Board requires all bidders to complete the attached form entitled 'Massachusetts State Tax Disclosure'. Pursuant to Massachusetts General Laws Chapter 32C Section 49A, all bidders must certify under the penalties of perjury that, to the best of their knowledge and belief, the organization has filed all state tax returns and paid all state taxes required under the law.
2. **Vendor Certification Form.** M.G.L. c. 32, § 23B requires that a vendor complete and file with the Board a Vendor Certification Form. This form can be found on the website of the Public Employee Retirement Administration Commission ("PERAC") <http://www.mass.gov/perac/docs/forms-pub/forms/c-8135.pdf> and must be submitted with your proposal.

SECTION IV. SCOPE OF SERVICES/REQUIREMENTS

A. Scope of Services

Under the direction of the Board, Counsel will be expected to keep abreast of and provide on-going advice and counsel with respect to matters bearing upon the area for which the firm, or attorney has been retained.

Set forth below is the description of the legal services to be provided by outside counsel to the Board. This description is not intended to be comprehensive but is intended to provide general guidance as to the scope of services that outside counsel will be expected to provide. Respondents are advised that the scope of services will be considered to include, in addition to the services described below, all of those

services understood by knowledgeable counsel to be reasonably necessary to satisfy the duties of such counsel.

Retirement Counsel The Board is seeking qualified law firms or individual attorneys with expertise in Chapter 32 of the General Laws of Massachusetts and regulations of 840 CMR to assist the Board with its fiduciary obligations including but not limited to the following:

- Administrative hearings under G.L. c. 32, § 15, for example in pension forfeiture cases
- Evidentiary review of disability retirement applications and related matters
- Representation in appeals before the Contributory Retirement Appeal Board
- Experience in retirement matters before District, Superior, Appeals and Supreme Judicial Court
- Qualified Domestic Relations Orders under Contributory Board of Retirement of Arlington vs. Mangiacotti and its progeny
- Investment Management Agreements and related documents

B. Requirements

1. MANDATORY COVER LETTER

Each response submission must be accompanied by a cover letter. The letter, which shall be considered an integral part of the submission, shall be signed by an individual who is authorized to bind the firm contractually, giving his or her title.

The letter must certify that all of the information contained in the submission is accurate and complete. Inaccurate or incomplete information might affect the submission adversely. The letter shall contain a statement to the effect that it constitutes an offer to provide the services requested subject to acceptance of compensation levels determined in accordance with this RFP.

INFORMATION REQUESTED

ALL FIRMS. All firms, regardless of the category or categories that they are responding with respect to, must answer the following questions:

A1. Please provide a general description of the firm, its history, significant changes in its makeup over the last three (3) years, and its range of business. Please provide a detailed listing, which may be presented in tabular form as an exhibit or appendix to your submission, of the number of attorneys (by partners, associates, counsel and other categories) and paralegals in each of the major practice areas of your firm. For sole practitioners, please provide your resume and any other relevant information relating to your background and areas of expertise.

A2. Please state your firm's experience in providing M.G.L. c. 32 legal services.

A3. Please provide the names and addresses for three (3) references that the Board may contact.

A4. Please provide a description of your firm's fee structure, including the billing rates for attorneys who will represent the Board with respect to these legal services. **Please place this under a separate cover.**

A5. Please indicate whether your firm intends to use the services of other vendors or attorneys. Indicate the nature of such arrangements, and include the names and resumes of the aforementioned with your response.

A6. Please provide details of any criminal investigation, regulatory proceeding, or material litigation against you, your firm, or members of your firm which is either pending or which has been completed in the last ten (10) years.

A7. Please provide details as to the nature (including coverage limitations) and amounts of your firm's professional liability insurance.

A8. If your firm believes that a conflict of interest may arise as a result of representing the Board, please describe the nature of the conflict. In addition, given the fact that conflicts of interest typically arise during the course of most continuous legal representation, please describe how you or your firm would handle a request to represent a party whose interest may be in conflict with the interest of the System. Specifically, in your practice, do you represent or have you represented: (a) any public employees in proceedings before or against retirement boards governed by Chapter 32 of the General Laws or by similar statutes; or (b) any vendors who provide or are proposing to provide services to retirement boards governed by Chapter 32 or by similar statutes. If so, please comment on whether such representation may give rise to potential conflicts with the Board.

A9. Please provide a detailed copy of your firm's equal employment opportunity and affirmative action policy, as well as your policy related to the pro bono activities of your attorneys.

2. SPECIFIC COUNSEL INFORMATION

B1. Please discuss your firm's proposed professional staffing for this engagement, if selected, providing a brief resume for each such professional, and the particular responsibilities of each such professional with respect to this matter. The naming of such persons shall be considered to be a commitment by the firm to assign those individuals to provide legal services to the Board if the firm is the successful proposer. Please indicate the number of minorities or women that are included within your proposed professional staffing for this engagement.

B2. Please describe the minimum required 5 other current engagements most relevant to this RFP in which one or more of the professionals named in response to question B1 above had principal responsibility. In this regard, please provide the client's name, client contact and telephone number.

B3. Please describe the specific steps you or your firm will take to be continually apprised of all developments within or related to the area of law which directly bear on the services to be performed pursuant to this RFP.

MASSACHUSETTS STATE TAX DISCLOSURE

Pursuant to Massachusetts General Laws Chapter 32C section 49A, I certify under the penalties of perjury that, to my best knowledge and belief, the organization I represent, has filed all state tax returns and paid all state taxes required under the law.

Social Security Number or
Federal Identification Number

Signature of Individual or
Corporate Name

Date

Position/Title

CERTIFICATION

The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean a natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

(Signature of individual submitting bid or proposal)

(Name of business or individual)

(Date)